

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT KASEBURG,

Plaintiff,

v.

PORT OF SEATTLE,

Defendant.

CASE NO. C14-0784 JCC

ORDER GRANTING KING
COUNTY'S MOTION FOR
EXPENSES AND ORDERING
ADDITIONAL BRIEFING

This matter comes before the Court on Defendant King County's motion for expenses (Dkt. No. 105 at 12) and Plaintiffs' response to the Court's order to show cause (Dkt. No. 146). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS King County's motion for the reasons explained herein.

Because Plaintiffs refused to respond to a single one of King County's discovery requests, King County moved the Court to compel Plaintiffs to respond. (Dkt. No. 105 at 1.) The Court granted King County's motion to compel and, pursuant to Federal Rule of Civil Procedure 37, ordered Plaintiffs to show cause for their nondisclosure. (Dkt. No. 138 at 25-26.) Under Rule 37, the Court must require Plaintiffs to pay the "reasonable expenses" King County incurred in making its motion to compel, unless Plaintiffs demonstrate that their nondisclosure was either "substantially justified" or "other circumstances make an award of expenses unjust." Fed. R. Civ.

1 P. 37(a)(5)(A)(ii)-(iii).

2 Plaintiffs claim that they refused to respond to King County's requests because they
3 "believed that the discovery served by King County could not and would not lead to discoverable
4 evidence because the issue was purely a legal one, as this Court ultimately concluded in its
5 Order." (Dkt. No. 146 at 2.) Plaintiffs are being disingenuous. Even though the Court concluded
6 that some of the issues in its order were resolvable as a matter of law, we also held as follows:

7 It is important to note that in Plaintiffs' fourth and fifth claims, and throughout their
8 briefing, they refer to their supposed "fee ownership in the right of way." The Court
9 finds that there are genuine issues of material fact as to which Plaintiffs, if any,
10 actually possess a fee interest in the corridor. (*See* Dkt. No. 124 at 12 n.7 (illustrating
11 various issues of fact regarding Plaintiffs' alleged fee ownership of the corridor)).
*The Court will not be able resolve these issues until Plaintiffs respond to King
County's outstanding discovery requests.* (Dkt. No. 138 at 19-20 (emphasis
added).)

12 In addition, Plaintiffs have not even attempted to justify the fact that they refused
13 to release the appraisals their expert performed in *Haggart v. United States*, 116 Fed. Cl.
14 131 (2014), and then relied on this very information in their motion for summary
15 judgment. (Dkt. No. 138 at 23-24.) That is surely because there is no justification.

16 The Court therefore finds that Plaintiffs lacked any reasonable—let alone
17 substantial—justification for their utter refusal to respond to any of King County's
18 discovery requests. Quite frankly, it would be unjust *not* to order them to reimburse King
19 County for its expenses.

20 For the foregoing reasons, King County's motion for expenses (Dkt. No. 105 at 12) is
21 GRANTED. Plaintiffs are hereby ORDERED to pay the reasonable expenses King County
22 incurred in bringing its motion to compel. The Court therefore ORDERS King County to file a
23 detailed accounting of these expenses on or before December 3, 2015. If Plaintiffs have any
24 objection to this accounting, they must file it on or before December 8, 2015. If the Court finds
25 King County's expenses reasonable, it will order Plaintiffs to pay them in full.

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1 DATED this 19 day of November 2015.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE
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